

108TH CONGRESS  
1ST SESSION

# S. 325

To amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers.

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2003

Mr. GRASSLEY (for himself and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

---

## A BILL

To amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SPOT MARKET PURCHASES OF LIVESTOCK BY**  
4               **PACKERS.**

5       Chapter 5 of subtitle B of the Agricultural Marketing  
6       Act of 1946 (7 U.S.C. 1636 et seq.) is amended by adding  
7       at the end the following:

1 **“SEC. 260. SPOT MARKET PURCHASES OF LIVESTOCK BY**  
 2 **PACKERS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) COOPERATIVE ASSOCIATION OF PRO-  
 5 DUCERS.—The term ‘cooperative association of pro-  
 6 ducers’ has the meaning given the term in section 1a  
 7 of the Commodity Exchange Act (7 U.S.C. 1a).

8 “(2) COVERED PACKER.—

9 “(A) IN GENERAL.—The term ‘covered  
 10 packer’ means a packer that is required under  
 11 this subtitle to report to the Secretary each re-  
 12 porting day information on the price and quan-  
 13 tity of livestock purchased by the packer.

14 “(B) EXCLUSION.—The term ‘covered  
 15 packer’ does not include a packer that owns  
 16 only 1 livestock processing plant.

17 “(3) NONAFFILIATED PRODUCER.—The term  
 18 ‘nonaffiliated producer’ means a producer of live-  
 19 stock—

20 “(A) that sells livestock to a packer;

21 “(B) that has less than 1 percent equity  
 22 interest in the packer, which packer has less  
 23 than 1 percent equity interest in the producer;

24 “(C) that has no officers, directors, em-  
 25 ployees, or owners that are officers, directors,  
 26 employees, or owners of the packer;

1 “(D) that has no fiduciary responsibility to  
2 the packer; and

3 “(E) in which the packer has no equity in-  
4 terest.

5 “(4) SPOT MARKET SALE.—

6 “(A) IN GENERAL.—The term ‘spot mar-  
7 ket sale’ means a purchase and sale of livestock  
8 by a packer from a producer—

9 “(i) under an agreement that specifies  
10 a firm base price that may be equated with  
11 a fixed dollar amount on the date the  
12 agreement is entered into;

13 “(ii) under which the livestock are  
14 slaughtered not more than 7 days after the  
15 date on which the agreement is entered  
16 into; and

17 “(iii) under circumstances in which a  
18 reasonable competitive bidding opportunity  
19 exists on the date on which the agreement  
20 is entered into.

21 “(B) REASONABLE COMPETITIVE BIDDING  
22 OPPORTUNITY.—For the purposes of subpara-  
23 graph (A)(iii), circumstances in which a reason-  
24 able competitive bidding opportunity shall be  
25 considered to exist if—

1 “(i) no written or oral agreement pre-  
 2 cludes the producer from soliciting or re-  
 3 ceiving bids from other packers; and

4 “(ii) no circumstance, custom, or  
 5 practice exists that—

6 “(I) establishes the existence of  
 7 an implied contract (as determined in  
 8 accordance with the Uniform Com-  
 9 mercial Code); and

10 “(II) precludes the producer from  
 11 soliciting or receiving bids from other  
 12 packers.

13 “(b) GENERAL RULE.—Of the quantity of livestock  
 14 that is slaughtered by a covered packer during each re-  
 15 porting day in each plant, the covered packer shall slaugh-  
 16 ter not less than the applicable percentage specified in  
 17 subsection (c) of the quantity through spot market sales  
 18 from nonaffiliated producers.

19 “(c) APPLICABLE PERCENTAGES.—

20 “(1) IN GENERAL.—Except as provided in para-  
 21 graph (2), the applicable percentage shall be—

22 “(A) in the case of a covered packer that  
 23 is not a cooperative association, 25 percent; and

24 “(B) in the case of a covered packer that  
 25 is a cooperative association, 12.5 percent.

1 “(2) EXCEPTIONS.—

2 “(A) COVERED PACKERS WITH A HIGH  
3 PERCENTAGE OF CAPTIVE SUPPLY CATTLE.—In  
4 the case of a covered packer (other than a cov-  
5 ered packer described in subparagraph (B))  
6 that reported to the Secretary in the 2001 an-  
7 nual report that more than 75 percent of the  
8 cattle of the covered packer were captive supply  
9 cattle, the applicable percentage shall be the  
10 greater of—

11 “(i) the difference between the per-  
12 centage of captive supply so reported and  
13 100 percent; and

14 “(ii)(I) during each of calendar years  
15 2004 and 2005, 5 percent;

16 “(II) during each of calendar years  
17 2006 and 2007, 15 percent; and

18 “(III) during calendar year 2008 and  
19 each calendar year thereafter, 25 percent.

20 “(B) COOPERATIVE ASSOCIATIONS WITH  
21 HIGH PERCENTAGE OF CAPTIVE SUPPLY CAT-  
22 TLE.—In the case of a covered packer that is  
23 a cooperative association and that reported to  
24 the Secretary in the 2001 annual report that  
25 more than 87.5 percent of the cattle of the cov-

1           ered packer were captive supply cattle, the ap-  
 2           plicable percentage shall be the greater of—

3                   “(i) the difference between the per-  
 4                   centage of captive supply so reported and  
 5                   100 percent; and

6                   “(ii)(I) during each of calendar years  
 7                   of 2004 and 2005, 5 percent;

8                   “(II) during each of calendar years of  
 9                   2006 and 2007, 7.5 percent; and

10                  “(III) during calendar year 2008 and  
 11                  each calendar year thereafter, 12.5 per-  
 12                  cent.

13           “(d) NONPREEMPTION.—Notwithstanding section  
 14 259, this section does not preempt any requirement of a  
 15 State or political subdivision of a State that requires a  
 16 covered packer to purchase on the spot market a greater  
 17 percentage of the livestock purchased by the covered pack-  
 18 er than is required under this section.

19           “(e) RELATIONSHIP TO OTHER PROVISIONS.—Noth-  
 20 ing in this section affects the interpretation of any other  
 21 provision of this Act, including section 202.”.

○